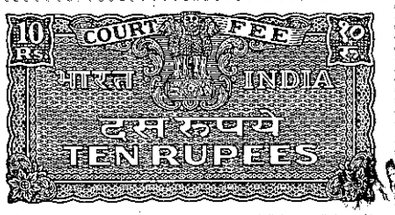

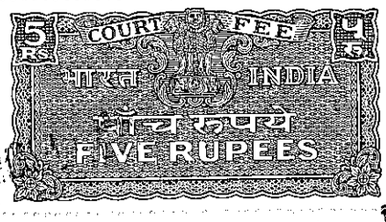

03

Single Bench

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH
AT BILASPUR

CRIMINAL REVISION NO. 173 / 2005

1429/05

Filed on 19/4/05

By Shri Y.N. Mishra Advocate

APPLICANT : Devnath Singh, S/o Munnilal Singh
Aged about 42 years,
R/o Village Basantpur, Ward 38,
Opp. Buddha Vihar, Rajnandgaon,
PS Basantpur, Distt. Rajnandgaon
(CG).

VERSUS

NON-APPLICANT : State of Chhattisgarh
Through P.S. Pipariya
District-Kabirdham (CG).

CRIMINAL REVISION U/S 397 READ WITH SECTION 401 OF THE CODE OF CRIMINAL PROCEDURE.

(133)

HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Justice Dhirendra Mishra

Criminal Revision No. 173 of 2005

Applicant : **Devnath Singh**

Vs.

Respondent : **State of Chhattisgarh.**

Applicant by Shri P.Diwakar, Sr. Advocate with Shri P.R.Patankar, Advocate.
State by Shri D.K.Gwalre, Panel Lawyer.

O R D E R
(Passed on 06 /05/2005)

Heard on admission.

The applicant has preferred this criminal revision against the impugned order dated 16.02.2005 passed by Special Judge, Kabirdham (Kawardha) in Sessions Trial No. 02/05 whereby the learned Sessions Judge has framed charges under Section 302 read with Section 34 of the Indian Penal Code and in the alternative charges under Section 306 read with Section 34 of the IPC.

The Police Station Pipariya, District-Kabirdham (Kawardha) initially registered an offence under Section 302 read with Section 34 of the IPC against the applicant and the co-accused namely Dilip Kumar Sisodiya. However, subsequently, after investigation chargesheet under Section 306 read with Section 34 of the IPC and under Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for brevity 'the Act') was filed. However, learned Sessions Judge, on the basis of the material available on record by the impugned order framed charges as aforesaid.

The allegations against the accused persons is that on the date of incident i.e. 05.10.2004, the applicant who was Head Constable and the accused No. 1 Dilip Kumar

Sisodiya who was Station House Officer of Police Station-Pipariya, called one Bannu Satnami for interrogation in connection with Offence No. 174/2004 in the police station along with other villagers. They were detained in the police station for whole of the night and on the following day they were interrogated. However, at about 12.30 hours on the following day, Bannu Satnami was found dead near the transformer situated in the backyard of the police station. Inquest report was prepared on 07.10.2004 in the presence of Sub-divisional Officer, Kawardha and other witnesses. As per inquest report injuries were found on the left eye, right ear, both the cheeks, palms, wrist, back of the palm, knees, on the back side of the skull, abrasion on the back and also on the testicles. After registration of FIR, postmortem was conducted by a team of doctors on 07.10.2004 at about 11.30 a.m. and in this postmortem report also 18 number of injuries were found by the doctors performing autopsy and they were ante-mortem in nature. The postmortem was conducted by a team of four doctors and in their opinion the death was due to asphyxia and shock caused by injuries to vital organs and hemorrhage and the duration of death was opined between 18 to 30 hours prior to postmortem examination. The operation of the postmortem was duly videographed and skin was preserved for Histopathalogical examination and vicera was preserved for chemical examination.

On further query, it was opined that the injuries may be caused by hard and blunt object and the injuries found on the body cannot be caused by fall from 4 to 5 feet height. It has been opined that the contusion in the intestine could be caused by force full blow, kicks and compression without visible external injuries to abdominal wall. Being not satisfied with the said postmortem report, the police sent the inquest report along with cassette of the postmortem to the Director, Medico Legal Medical College, Raipur with a request to give examination report after perusal of the same and after examination of the same, a final opinion was given that the electrocution appears to be more probable and proximate cause of death of the deceased. However, circumstantial evidence was also required to be considered to arrive to the conclusion. Expert opinion of the Director of Medico Legal Institute of Govt. of Madhya Pradesh, Bhopal, (police station) was also obtained and Director of Medico, Legal Institute, Bhopal endorsed the opinion expressed by Dr. R.K. Singh and others.

Learned counsel for the applicant reading extensively from subsequent report submitted by Department of Forensic Laboratory and Toxicology, Medical College,

Raipur and the report submitted by the Director, Medico Legal Institute, Bhopal, argued that probable cause of the death of the deceased was electrocution and not the injuries sustained by the deceased as opined in the postmortem report. It is also argued that the none of the witnesses whose diary statements have been recorded by the police, has stated that the deceased was tortured by the applicant in the police station and even if all the evidence available on record is considered to be proved, no offence against applicant is made out much less an offence under Section 302 read with Section 34 of the IPC and the Court below without considering the material available on record, has mechanically framed charges against the applicant by the impugned order under aforesaid Sections which is per se erroneous and liable to be set aside.

I have heard learned counsel for the applicant and have also gone through the chargesheet.

The evidence available on the chargesheet is to the effect that the Station House Officer and the Head Constable of Police Station-Pipariya summoned the deceased to the police station and on being summoned, the deceased went there at about 5.00 p.m. and remained in the police station in the intervening night of 5th and 6th October, 2004 and he was found dead near a transformer on the backyard of the police station between 12.30 and 12.45 p.m. with number of injuries. The injuries have been elaborately described in the inquest report as also in the first postmortem report.

Thus, it is well settled law that at the stage of framing of charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused and it is not required to appreciate the evidence produced by the prosecution as has been held by the Hon'bel Apex Court in the matter of ***State of M.P. Vs. S.B.Johari*** reported in ***2000 Cr. L. J. 944 (SC)*** and also in (***2003) 12 SCC 42***9 in the matter ***of Rajmata Vijaya Raje Scindia Vs. State of M.P***.

Taking into consideration the facts and circumstances of the case and the material available on record, I am of the opinion that the learned Sessions Judge has not committed any illegality in framing charges against the applicant under Section 302 read with 34 and in the alternative under Section 306 read with 34 of the IPC and accordingly, the instant revision petition deserves to be dismissed and it is dismissed.

Sd/-
Dhirendra Mishra
Judge